

GERMAN ARBITRATION DIGEST

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| GAD No.: | GAD 2026, 7 | Decision date: | 29 October 2025 | Res judicata: Yes |
| Court: | Highest Regional Court of Bavaria (Bayerisches Oberstes Landesgericht, BayObLG) | | | |
| Case No. : | 101 Sch 54/25 e | | | |
| Keywords: | Domestic arbitral award, declaration of enforceability, public policy, right to be heard, surprise decision, required judicial notice by the arbitral tribunal, révision au fond | | | |
| Key legal provisions: | Sections 1059(2), 1060(2) and 62 German Code of Civil Procedure (ZPO); Section 721 German Civil Code (BGB) | | | |

Highest Regional Court of Bavaria reaffirms high threshold for public policy violations, particularly regarding objections to violations of the right to be heard, including surprise decisions

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On 29 October 2025, in a dispute between a patent attorney and her former firm and partners, the Highest Regional Court of Bavaria (BayObLG) reinforced the high threshold an objecting party must meet when seeking to set aside an award for violations of the right to be heard. In upholding the arbitral awards in question, the BayObLG also dismissed the applicants' arguments alleging an unjust surprise decision as well as excessive reach of the awards' *res iudicata* effect on third parties.

Facts

The applicants are a patent attorney firm organised as a partnership with limited professional liability, as well as its current partners. The respondent is a former partner of said firm who had transferred her shares in the partnership effective 31 December 2017. The applicants sought to partially set aside and resist enforcement of a German domestic arbitral award and a supplementary cost award. Both awards were rendered in a dispute over the determination of the 2017 annual financial statement and resulting payment claims asserted by the former partner, the respondent. The respondent sought a declaration of enforceability of the awards.

Before the BayObLG, the applicants raised several public policy objections. On substance, the applicants argued the awards are unenforceable because another former partner of the firm – who was not a party to the arbitration – did not participate in the determination of the annual financial statement in question. Procedural public policy objections included concerns of a *res iudicata* effect vis-à-vis said former partner, of violations of the applicants' right to be heard resulting from a surprise decision without prior judicial notice by the arbitral tribunal, and of a violation of the *ne ultra petita* principle if found that the arbitral tribunal had gone beyond the scope of the prayer for relief.

The BayObLG dismissed the set-aside application and declared the awards enforceable.

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Key findings

The BayObLG found no grounds for setting aside or refusing enforcement of the awards, holding that enforcement of the awards does not violate public policy.

First, the BayObLG held that the former partner's absence from the arbitral proceedings relating to the determination of the annual financial statement does not violate public policy. This is because the former partner is not bound by the awards, which exert *res iudicata* effect only over the parties to the arbitration, not *erga omnes*. Further, the court found that joining the former partner to the proceedings was not required under German procedural law, regardless of whether a uniform decision vis-à-vis all partners was logically required or desirable. The BayObLG went on to note that, even if the former partner had been part of the arbitral proceedings as a necessarily joined party ("notwendiger Streitgenosse", quod non), the principle of consistent substantive decisions is not an indispensable, elementary principle of the German legal order giving rise to a public policy violation.

Second, the BayObLG dismissed the applicants' arguments of an unjust surprise decision that should have required a prior judicial notice by the arbitral tribunal affording the parties an opportunity to (further) address the involvement of the former partner in the determination of the annual financial statement, or other issues. The court held that the applicants' objections to violations of the right to be heard lacked vital elements of applications to set aside the awards under Section 1059(2) No 1 lit. b and No 2 lit. b German Code of Civil Procedure (ZPO). In particular, the applicants failed to demonstrate how they would have amended their submissions in response to a prior judicial notice by the arbitral tribunal. The BayObLG further emphasised that judicial notice by the arbitral tribunal is only required under specific circumstances and that it is the objecting party's responsibility to demonstrate such a requirement.

Third, the BayObLG found that the arbitral tribunal did not violate the applicants' right to be heard by rendering a decision beyond the scope of the prayer for relief. Stressing the prohibition of a *révision au fond* regarding possible interpretative errors by the tribunal, the court found that the tribunal did not grant more than requested by the respondent, leaving no room for a public policy violation in this regard.

Comment

The decision follows German courts' restrictive approach to alleged public policy violations when reviewing arbitral awards. It particularly highlights the importance of carefully reasoned and substantiated objections to alleged violations of the right to be heard. Parties must show how the tribunal misconducted the proceedings as well as how this affected the outcome, e.g. how the objecting party would have amended their submissions had they been given the required judicial notice by the arbitral tribunal. Relating to the substantive public policy objections, the court reiterated the German Federal Court of Justice's (Bundesgerichtshof's) stance that not every contradiction between an arbitral award and mandatory provisions of German law constitutes a violation of public policy. Such a violation arises only if the provision concerned is indispensable to the point where it expresses a fundamental value judgment of the legislator for the legal order.